

RECORDATION NO. Filed 1425

APR 16 1980 2 00 PM

INTERSTATE COMMERCE COMMISSION

Mellon National Leasing Corporation

Suite 3629
Mellon Bank Building
Pittsburgh, Pennsylvania 15219
412/232-5061

RECORDATION NO. 11676 Filed 1425

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

April 14, 1980

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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 11676 No. 0-107A031 Filed 1425

Date APR 16 1980

Fee \$ 280.00

INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

Secretary of the Interstate Commerce
Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Sir:

Please find enclosed three multiple originals
of each of the following:

1. Agreement and Lease dated as of March 1, 1980 between
Mellon National Leasing Corporation, a Pennsylvania corporation
("Mellon"), as lessor, and Emons Industries, Inc., a New York
corporation ("Emons"), as lessee, of 100 new gondola railroad
cars bearing identification numbers SB 6000 to 6099 inclusive
and the name of Mellon.

2. Gondola Car Agreement No. 1 dated as of September 7, 1979 between Emons and South Buffalo Railway Company ("Railroad"), pursuant to which Emons shall make gondola cars SB 6000 through 6049 available for use by Railroad.

3. Gondola Car Agreement No. 2 dated as of September 7, 1979 between Emons and Railroad, pursuant to which Emons shall make gondola cars SB 6050 through 6099 available for use by Railroad.

4. Supplement No. 1 to Gondola Car Agreement No. 1 dated April 9, 1980 between Emons and Railroad.

5. Supplement No. 1 to Gondola Car Agreement No. 2 dated April 9, 1980 between Emons and Railroad.

6. Assignment and Security Agreement dated as of March 1, 1980 among Emons, as debtor, Mellon, as secured party, and Railroad covering all of Emons' right, title and interest in and to the Gondola Car Agreements.

Also enclosed is a check in the amount of \$180 for recording said documents. Please record the documents in the following order: Agreement and Lease, Assignment and Security Agreement, Gondola Car Agreement No. 1, Gondola Car Agreement No. 2, Supplement No. 1 to Gondola Car Agreement No. 1 and Supplement No. 1 to Gondola Car Agreement No. 2.

Nancy Clayton
Quintana

RECEIVED
2 00 PM '80
I.C.C. OPERATION BR.

Secretary of the Interstate
Commerce Commission

-2-

April 14, 1980

The addresses of the parties to the documents are
as follows:

Mellon National Leasing Corporation
3629 Mellon Bank Building
Pittsburgh, Pennsylvania 15219

Emons Industries, Inc.
490 East Market Street
York, Pennsylvania 17403

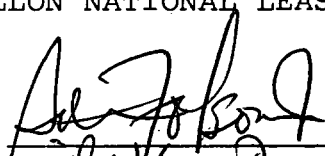
South Buffalo Railway Company
1275 Daly Avenue
Bethlehem, Pennsylvania 18015

Please return one copy of each document and official
recording receipt to the undersigned at Mellon's address.
Thank you.

Very truly yours,

MELLON NATIONAL LEASING CORPORATION

By


Vice President

4/16/80

Interstate Commerce Commission
Washington, D.C. 20423

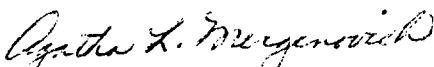
OFFICE OF THE SECRETARY

Arthur Folson
Mellon National Leasing Corporation
Mellon Bank Building Suite 3629
Pittsburgh, Pennsylvania 15219

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/16/80 at 2:00pm, and assigned re-recording number(s). 11676, 11676-A, 11676-B, 11676-C, 11676-D, 11676-E

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

WASHINGTON, D. C.)

SS:

I hereby certify that I am a Notary Public and further certify that on this 16th day of April, 1980, I compared the foregoing copy with the original document and that it is a true and correct copy in all respects.


Notary Public

My Commission Expires: My Commission Expires August 14, 1984

EMONS LEASE-CB
4/8/80

11676 ✓
RECORDATION NO. Filed 1425

APR 16 1980 - 2 00 PM
11070
INTERSTATE COMMERCE COMMISSION

AGREEMENT AND LEASE

dated as of March 1, 1980

between

MELLON NATIONAL LEASING CORPORATION,

Lessor

and

EMONS INDUSTRIES, INC.,

Lessee

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AGREEMENT AND LEASE

THIS AGREEMENT AND LEASE, dated as of March 1, 1980 between MELLON NATIONAL LEASING CORPORATION, a Pennsylvania corporation ("Lessor"), and EMONS INDUSTRIES, INC., a New York corporation ("Lessee");

W I T N E S S E T H T H A T :

WHEREAS, Lessee has requested that Lessor purchase and lease to Lessee the personal property described in the Lease Schedule (attached hereto), and Lessor is willing to do so upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto, in consideration of their mutual covenants hereinafter set forth and intending to be legally bound hereby, agree as follows:

ARTICLE I. Certain Definitions

In addition to the words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings, respectively, unless the context hereof clearly otherwise requires:

"AAR" shall mean the Association of American Railroads or any successor organization.

"Additional Rent" shall mean any and all amounts, liabilities and obligations which Lessee assumes or agrees to pay hereunder pursuant to Section 4.3 of this Agreement, other than Basic Rent and Interim Rent.

"Agreement" shall mean this Agreement and Lease, as amended or supplemented from time to time, and shall include the Lease Schedule, the Lease Supplement and each Certificate of Acceptance executed and delivered from time to time pursuant to this Agreement. Each reference herein to "this Agreement", "herein", "hereunder", "hereof" or other like words shall include this Agreement, the Lease Schedule, the Lease Supplement, each such Certificate of Acceptance and any annex, exhibit or schedule attached hereto or thereto.

"Assignment" shall mean the Assignment and Security Agreement dated as of March 1, 1980 among Lessee, Lessor and South Buffalo Railway Company.

"Basic Rent" shall mean the amount payable as Basic Rent by Lessee pursuant to Section 4.2 of this Agreement.

"Certificate of Acceptance" shall mean the certificate of Lessee substantially in the form of Exhibit A hereto (including Attachment 2 thereof) executed and delivered from time to time under this Agreement.

"Default" and "Event of Default" shall mean any of the events described in Section 14.1 hereof.

"Equipment" shall mean all the Units described in the respective Certificates of Acceptance executed and delivered from time to time under this Agreement.

"Final Delivery Date" shall mean the date identified as such in the Lease Schedule.

"Gondola Car Agreement" shall mean both and each of the two Gondola Car Agreements dated as of September 7, 1979 between Lessee and South Buffalo Railway Company.

"Interest Payment Rate" shall mean the lesser of the rate per annum identified as such in the Lease Schedule or the maximum rate permitted by law.

"Interim Rent" shall mean the amount, if any, payable as Interim Rent by Lessee pursuant to Section 4.2 of this Agreement.

"Lease Schedule" shall mean the Lease Schedule executed and delivered by Lessor and Lessee as of the date hereof, attached hereto and hereby incorporated herein.

"Lease Supplement" shall mean the Lease Supplement attached hereto and hereby incorporated herein.

"Lessee's Right to Contest" shall mean, when used herein to modify Lessee's obligation to make payments to a governmental authority or other third party (other than payments required to be made pursuant to Section 11.2 hereof) or to take any action with respect to the Equipment imposed by law or by governmental authority, that Lessee shall have the right to contest such obligation by appropriate proceedings diligently conducted in good faith by Lessee so long as (i) Lessee shall first notify Lessor of its intention to exercise such right and shall supply Lessor with all such information with respect thereto as Lessor shall reasonably request, (ii) such contest does not, in Lessor's reasonable judgment, involve any danger of

sale, forfeiture or loss of any Unit or create any danger of Lessor incurring criminal liability or other liability for which indemnification, satisfactory to Lessor and its counsel, of Lessor, its successors, assigns, representatives, directors, officers, employees, agents and servants by Lessee is not provided, and (iii) no Event of Default (or other condition, event, act or omission which with notice or lapse of time or both would be an Event of Default) has occurred and is continuing.

"Lessor's Cost" shall mean the purchase price of each Unit to Lessor (which shall not exceed the amount set forth in the Lease Schedule), plus any excise, sales and use taxes paid or payable by Lessor with respect to the purchase thereof, and plus any costs and expenses approved and paid by Lessor in connection with the delivery and installation thereof.

"Railroad" shall mean South Buffalo Railway Company.

"Rent" shall mean Additional Rent, Basic Rent and Interim Rent, collectively.

"Rental Payment Date" shall mean each date on which Basic Rent (and Interim Rent, if any) is payable hereunder.

"Stipulated Loss Value" shall mean with respect to each Unit the amount identified as such in the Lease Schedule.

"Term" shall mean the period of time for which any one or more of the Units is leased hereunder.

"Unit" shall mean each individual item of personal property described in any Certificate of Acceptance executed and delivered under this Agreement.

ARTICLE II. Agreement to Lease

Lessor and Lessee agree that, from time to time on or before the Final Delivery Date, Lessor shall accept title to the respective Units (provided the purchase price therefor shall not exceed individually or collectively the amount assigned to such Units in the Lease Schedule), and simultaneously therewith Lessor shall lease the Units to Lessee and Lessee shall hire same from Lessor, all upon the terms and subject to the conditions of this Agreement.

ARTICLE III. Delivery and Acceptance

3.1. Delivery and Acceptance of Equipment. Lessee (or at its request, Lessor) has contracted or will contract with the vendor of each Unit for delivery at the location set forth in the Lease Schedule. Lessor shall not be liable for any failure or delay in obtaining, or in delivery of, any of the Units.

Forthwith upon delivery of each Unit, Lessee shall inspect and determine whether to accept same from the vendor. Lessor hereby appoints Lessee, as the authorized representative of Lessor, to accept delivery of each Unit from the vendor thereof. Acceptance of delivery by Lessee shall, without further act, irrevocably constitute acceptance by Lessee and Lessor of such Unit for all purposes of this Agreement.

Lessee hereby acknowledges and represents and warrants to Lessor with respect to each Unit so accepted that (i) such Unit is of a size, design, capacity and manufacture selected by Lessee, (ii) such Unit conforms to the applicable description set forth in the Lease Schedule, and (iii) Lessee is satisfied that such Unit is suitable for its purposes; provided, however, that nothing contained in this Agreement or in any Certificate of Acceptance shall in any way diminish or otherwise affect any rights which Lessor or Lessee may have against the vendor or manufacturer of any Unit or any subcontractor of such vendor or manufacturer.

3.2. Certificate of Acceptance. Lessee shall promptly complete, execute and deliver to Lessor a Certificate of Acceptance with respect to each Unit so determined acceptable, and in conjunction shall take such other action as may be necessary to fulfill the applicable conditions specified in Article VI hereof.

ARTICLE IV. Term and Rent

4.1. Term. The Term shall commence on the date of acceptance by Lessee of the first Unit accepted for lease hereunder, as evidenced by the execution and delivery by Lessee of the Certificate of Acceptance with respect thereto. Unless earlier terminated or extended in accordance with the express provisions hereof, the Term shall expire on the date determined in accordance with the Lease Schedule.

4.2. Basic Rent and Interim Rent. Lessee shall pay to Lessor Basic Rent for each Unit, in the aggregate amount and in the installments and on the Rental Payment Dates as specified in the Lease Schedule and in the Certificate of Acceptance covering such Unit, and if so provided in the Lease Schedule, Lessee shall pay to Lessor Interim Rent in the amount determined as therein provided and on the Rental Payment Dates therein specified.

4.3. Additional Rent. The lease created pursuant to this Agreement is a "net" lease. Lessee shall pay as Additional Rent all amounts (in addition to Basic Rent and Interim Rent, if any) required to be paid under this Agreement and (except as expressly provided herein and subject to Lessee's Right to Contest) all costs, taxes, assessments and other expenses of every character (whether foreseen or unforeseen and whether or not expressly provided for herein) (excluding however, taxes, fees and other charges based upon or measured by Lessor's net income, together with interest and penalties with respect thereto) relating to or arising in connection with the use, occupancy, ownership, maintenance, repair, replacement or reconstruction of any Unit during the Term and, to the extent expressly provided herein, thereafter. Lessee shall also pay to Lessor as Additional Rent interest at the Interest Payment Rate on each overdue installment of Basic Rent (and Interim Rent, if any) and on each overdue payment of Additional Rent.

4.4. Payment of Rent. Each installment of Basic Rent (and Interim Rent, if any) shall be paid to Lessor at its office at 3629 Mellon Bank Building, Pittsburgh, Pennsylvania 15219, or as directed by Lessor, and all Additional Rent shall be paid directly to the person entitled thereto and if such person is Lessor at its office or as it directs as aforesaid. All payments of Rent shall become due at 5:00 p.m. Pittsburgh time on the Rental Payment Date when due.

4.5. No Set-Off. Lessee shall not be entitled to any abatement of Rent, reduction thereof or set-off, counterclaim, recoupment or defense against Rent, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever; nor, except as otherwise expressly provided herein, shall this Lease terminate or the obligations of Lessee be otherwise affected by reason of any defect in the title, condition, design, operation or fitness for use of any Unit or damage to or loss of possession or loss of use or destruction of all or any of such Units from whatsoever cause and of whatever duration or any presently existing or hereafter created liens, encumbrances or rights of others with respect to any Unit or the prohibition of or other restriction against Lessee's use of all or any of such Unit or the interference with such use by any person or entity or the invalidity or unenforceability or lack of due authorization of this Agreement or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee, or for any combination of such cause or any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Agreement.

To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Except for clerical error, each payment of Rent made by Lessee hereunder shall be final, and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

ARTICLE V. Representations and Warranties

5.1. Lessor's Representations and Warranties. Lessor represents and warrants to Lessee that Lessor has received whatever title was conveyed to it by the vendor from which title to each Unit was received and that the Equipment is free of liens and encumbrances which may result from any claims against Lessor, except to the extent that such liens or encumbrances arise from the failure of Lessee to perform any of Lessee's obligations hereunder. Lessor further represents and warrants that it has full power and authority to lease the Equipment to Lessee in accordance with the terms hereof. THE WARRANTIES OF LESSOR SET FORTH IN THIS SECTION 5.1 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES OF LESSOR WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE EQUIPMENT PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE EQUIPMENT, but Lessor authorizes Lessee, at Lessee's expense, to assert during the Term, so long as no Event of Default and no event which with notice or lapse of time or both would be an Event of Default shall have occurred and be continuing, all of Lessor's rights under any manufacturer's, vendor's or dealer's warranty with respect to the Equipment, and Lessor agrees to cooperate with Lessee in asserting such rights; provided, however, that Lessee shall not attempt to enforce such rights unless (i) Lessee shall first notify Lessor of Lessee's intention to enforce such rights and shall furnish to Lessor such information with respect thereto as Lessor may reasonably request and (ii) the enforcement of such rights does not, in Lessor's reasonable judgment, involve any danger of sale, forfeiture or loss of any Unit or create the danger of Lessor's incurring criminal liability or other liability for which indemnification by Lessee, satisfactory to Lessor and its counsel, of Lessor and its successors, assigns, representatives, directors, officers, employees, agents and servants is not provided. Any amount received by Lessee as payment under any warranty pursuant to the above authorization shall be applied to restore the Equipment to as good a condition as it was or should have been (but for defects giving rise to such payment under warranty) when delivered to Lessee hereunder, ordinary wear and tear excepted, with the balance of such amount, if any, to be paid over to Lessor. The provisions of this Section

5.1 have been negotiated and agreed to by the parties hereto and, except to the extent otherwise expressly provided in this Section 5.1, are intended to be a complete negation and exclusion of any representations or warranties by Lessor, express or implied, whether arising pursuant to the Uniform Commercial Code or any similar law now or hereafter in effect, or otherwise.

5.2. Lessee's Representations and Warranties. Lessee represents and warrants that:

(a) Lessee is a corporation duly organized and existing in good standing under the laws of the state of its incorporation, and is duly qualified to do business in Pennsylvania and in those other jurisdictions where failure to qualify would have a material adverse affect on Lessee;

(b) Lessee has full corporate power and authority to execute, deliver and perform this Agreement, the Gondola Car Agreement and the Assignment. The execution and delivery by Lessee of this Agreement, the Gondola Car Agreement and the Assignment, have been duly authorized by all necessary corporate action on the part of Lessee; do not require the approval of, or the giving of notice to, any federal, state, local or foreign governmental authority (except such as has already been given or obtained); do not contravene any law, governmental regulation or judicial or administrative order or decree binding on Lessee; and do not contravene Lessee's charter or by-laws or any indenture or agreement to which Lessee is a party or by which it or its property is bound;

(c) This Agreement, the Gondola Car Agreement and the Assignment, constitute legal, valid and binding obligations of Lessee, enforceable in accordance with their respective terms;

(d) Except as disclosed in a letter furnished by Lessee to Lessor at or before the time of execution of this Agreement, there are no pending or threatened actions or proceedings against Lessee or any of its affiliates before any court, administrative agency or other tribunal or body which may materially adversely affect Lessee's financial condition or operations or which question the legality or validity of this Agreement or which may affect Lessee's ability to perform its obligations hereunder; and

(e) The balance sheet of Lessee as of the close of its most recent fiscal year and the earnings statement of Lessee for the fiscal year then ended have been furnished to Lessor and fairly present Lessee's financial condition as of such date and the results of its operations for such year, in accordance with generally accepted accounting principles consistently applied, and since such date there has been no material adverse change in such condition or operations.

ARTICLE VI. Conditions to Lessor's Obligations

6.1. Conditions. Lessor's duties and obligations under this Agreement are subject to the execution and delivery by Lessee of a Certificate of Acceptance with respect to each Unit and to fulfillment of the applicable conditions precedent set forth in Sections 6.2 through 6.5 hereof, in each case in form, substance and manner reasonably satisfactory to Lessor and its counsel.

6.2. Accuracy of Representations and Warranties; No Default. The representations and warranties contained in Section 5.2 hereof shall have been true and correct when made and shall be true and correct on and as of the date of delivery of each Certificate of Acceptance; on each such delivery date no Event of Default and no condition, event, act or omission which, with notice or the lapse of time or both, would constitute an Event of Default shall have occurred and be continuing; and on each such delivery date Lessee shall deliver to Lessor a certificate to both such effects, dated such date and signed by the Chairman of the Board, President, any Vice President or the Treasurer of Lessee.

6.3. Initial Acceptance. Prior to or simultaneously with delivery of the first Certificate of Acceptance (the "Initial Closing Date"), Lessee and Railroad shall have executed and delivered to Lessor the Gondola Car Agreement and the Assignment and Lessee shall have furnished to Lessor:

(a) A copy of the resolutions of the Board of Directors (and if applicable the shareholders) of Lessee, certified as of the Initial Closing Date by the Secretary or an Assistant Secretary of Lessee, duly authorizing the lease of the Equipment hereunder and the execution, delivery and performance of this Agreement and the Assignment.

(b) A certificate of the Secretary or an Assistant Secretary of Lessee dated the Initial Closing Date as to the incumbency and signatures of the person or persons authorized to execute this Agreement and the other documents contemplated hereby on behalf of Lessee.

(c) An opinion of counsel for Lessee dated the Initial Closing Date (i) as to the matters set forth in Section 5.2 other than subparagraph (e) thereof, (ii) to the effect that the Assignment grants to and creates in favor of Lessor a first and senior security interest in the Gondola Car Agreement, which security interest has been duly perfected, and (iii) as to such other matters as Lessor may reasonably request. Such opinion in respect of the matters referred to in Section 5.2(c) may be qualified by reference to the effect of bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally and to the effect of laws

relating to or affecting the remedy of specific performance. Such opinion in respect of the matters referred to in Section 5.2(d) may be qualified with the words "to the best of our knowledge", provided such counsel has discussed such matters with an executive officer of Lessee and the opinion so states.

(d) An appraisal prepared and signed by an independent appraiser stating that the Equipment will have an expected residual value at the end of the Term of at least 20% of Lessor's Cost, disregarding inflation or deflation.

(e) An opinion of counsel for the Railroad dated the Initial Closing Date to the effect that (i) the Railroad is a corporation duly organized and existing in good standing under the laws of its state of incorporation, and is qualified to do business in those jurisdictions where such qualification is necessary, and (ii) the Gondola Car Agreement and the Assignment constitute legal, valid and binding obligations of the Railroad enforceable in accordance with their respective terms.

(f) Evidence satisfactory to Lessor that this Agreement, the Gondola Car Agreement and the Assignment have been duly filed and recorded with the Interstate Commerce Commission in conformity with 49 U.S.C. §11303 and in Canada in conformity with the laws of Canada.

(g) An opinion of counsel for Lessee dated the Initial Closing Date to the effect that the rights of Lessor in the Equipment, this Agreement, the Gondola Car Agreement and the Assignment have been duly perfected in Canada and are prior to the rights of all third parties in the Equipment and in said instruments.

6.4. Each Acceptance. Prior to or simultaneously with delivery of a Certificate of Acceptance with respect to each Unit, Lessee shall have furnished to Lessor the following:

(a)(i) A true and correct copy of all purchase orders, invoices and other contract documents relating to such Unit between the vendor thereof and Lessee,

(ii) An executed copy of an assignment of such purchase orders, invoices and other contract documents in substantially the form of Exhibit B hereto,

(iii) An executed copy of a consent to each such assignment substantially in the form of Exhibit C hereto,

(iv) Tender of an executed bill of sale for such Unit substantially in the form of Exhibit D hereto, and

(v) Evidence satisfactory to Lessor that the person or persons signing each such consent to assignment and each such bill of sale was duly authorized to do so.

(b) Evidence satisfactory to Lessor that Lessee has obtained insurance with respect to the Unit as required by Article X hereof.

6.5. Other Matters. All other legal proceedings and details relative to this Agreement shall be reasonably satisfactory to Lessor and its counsel, and Lessor shall have been furnished with original or certified copies of such other documents as it or its counsel may reasonably request.

ARTICLE VII. Reports

7.1. Financial Reports. Lessee shall, as soon after the end of each fiscal year of Lessee as practicable (and in any event within 90 days thereafter), furnish to Lessor duplicate copies of Lessee's most recent financial reports, including Lessee's most recent annual report and balance sheet and profit and loss statement, certified by a recognized firm of certified public accountants. Interim statements, certified by the chief financial or accounting officer of Lessee, shall be furnished within fifteen days after their preparation by Lessee.

7.2. Annual Certificate. Lessee shall furnish to Lessor, concurrently with the delivery of the annual financial statements of Lessee required by Section 7.1 hereof, a certificate signed on behalf of Lessee by the chief financial or accounting officer of Lessee stating as of a recent date (but not more than three months prior thereto):

(a) The make, model and manufacturer's serial number of each Unit;

(b) The manufacturer's serial number of any Unit that has become lost, destroyed, irreparably damaged or otherwise permanently rendered unfit or unavailable for use since the date of the previous report delivered pursuant to this Section 7.2 (or since the commencement of the Term in the case of the first such report);

(c) That the Equipment has been kept in good order and repair or is then being repaired in accordance with Section 8.1 hereof;

(d) That the location and identification requirements of Section 8.2 hereof have been complied with in the case of each Unit;

(e) The "AAR depreciated value" of each Unit determined in accordance with Rule 107 of the Field Manual of the AAR Interchange Rules; and

(f) That the signer of the certificate has made, or caused to be made by persons under his authority and direction, a reasonable investigation concerning the Equipment and Lessee's compliance with its obligations hereunder, and that no Event of Default, and no condition, event, act or omission which with notice or lapse of time or both would be an Event of Default, has occurred and is continuing or, if any such Event or condition, event, act or omission has occurred and is continuing, the nature thereof and the steps which Lessee has taken or is taking to cure the same.

7.3. Additional Reports. Upon the written request of Lessor at any time and from time to time, Lessee will also deliver to Lessor, within fifteen (15) days of such request, a certificate executed on behalf of Lessee by a duly authorized officer containing the information, as of a date not earlier than the date of such request, called for by Section 7.2(f). Lessee shall also furnish to Lessor such additional information concerning the location, condition, use and operation of the Equipment and the financial condition and operations of Lessee as Lessor may reasonably request from time to time, and Lessee shall permit any person designated by Lessor to visit and inspect the Equipment and the records maintained in connection therewith and to discuss the affairs, finances and accounts of Lessee with the principal officers of Lessee, all at such reasonable times during normal business hours and as often as Lessor may reasonably request.

7.4. Accidents. In the event of an accident arising out of alleged or apparent defective design or manufacture or out of the use or operation of any Unit, Lessee shall promptly file with the appropriate governmental agencies all notices required by law and shall promptly deliver to its insurance carriers all notices called for under each policy of insurance relating to such Unit. Concurrently with such filing or delivery, Lessee shall deliver to Lessor a copy of the notice so filed or delivered. Lessee shall also deliver to Lessor any additional information with respect to such accident which Lessor shall reasonably request and shall promptly make available to Lessor all correspondence, papers, notices and documents whatsoever received by Lessee in connection with any claim or demand involving or relating to any such accident.

7.5. Tax Liens. Lessee shall notify Lessor in writing, within ten days after any day on which any tax lien

shall attach to any Unit, of such lien and of the location of such Unit on such day.

7.6. Change in Identifying Road Numbers. Lessee shall notify Lessor in writing, within ten days after any day on which the identifying road number of any Unit shall be changed, of the new identifying road number of such Unit and of the location of such Unit on such day.

ARTICLE VIII. Maintenance, Use and Operation

8.1. Maintenance and Operation. Lessee, at its own cost and expense, shall, or shall cause others to, service, repair, maintain and overhaul each Unit so as to keep it (i) in as good operating condition as it was when delivered to Lessee hereunder, ordinary wear and tear excepted, and (ii) subject to Lessee's Right to Contest, in such condition as shall meet all applicable federal, state or local laws or regulations and the applicable rules of the AAR. Lessee shall not use, operate, maintain or store any Unit in violation of this Agreement, of any instructions therefor furnished by the manufacturer or vendor thereof or, subject to Lessee's Right to Contest, of any applicable federal, state or local law or regulation or the applicable rules of the AAR; nor use or operate any Unit other than in a manner and for the use contemplated by the manufacturer thereof.

8.2. Location and Insignia. Lessee shall cause the Equipment to be located at all times within the continental United States, Canada or Mexico and to remain at all times within the control of Lessee or the Railroad (except to the extent necessary or appropriate for purposes of compliance with the express provisions of this Agreement). Lessee shall maintain on each Unit the following identification in letters not less than two inches high: "Mellon National Leasing Corporation Owner-Lessor"; and shall not remove, or permit the removal of, such insignia or identification without the prior written consent of Lessor.

8.3. Supplies. Lessee shall pay for and provide all supplies consumed by and required for each Unit and all repairs, parts and supplies necessary therefor.

8.4. Accessories. Lessee shall not, without the prior written consent of Lessor, affix or install any accessory, equipment or device on any Unit if such addition will impair the value or the originally intended function or use of such Unit. All repairs, parts, supplies, accessories, equipment and devices furnished or affixed to the Equipment shall thereupon become the property of Lessor (except such as may be removed without in any way affecting or impairing the value or the originally intended function or use of the Equipment). Immediately upon any replacement part becoming incorporated or installed in or attached to the Equipment, without further act, title to the

removed part shall thereupon vest in Lessee, free and clear of all rights of Lessor.

8.5. Personal Property. Lessee shall not, without the prior written consent of Lessor and subject to such conditions as Lessor may impose for its protection, affix or install any Unit to or in any real property, it being the mutual intention of the parties that the Equipment at all times shall be and remain personal property of Lessor. Lessee shall take such steps as may be necessary to prevent any person from acquiring any rights in any Unit by reason of such Unit being claimed or deemed to be real property.

8.6. Sublease and Assignment. Lessee shall not, without the prior written consent of Lessor, which consent will not be unreasonably withheld (it being understood that written consent in one instance shall apply only in the given instance and shall not constitute a waiver of any of the terms of this Agreement), assign this Agreement or sublease or let any Unit (excepting the Gondola Car Agreement and subleases to Maryland and Pennsylvania Railroad Company). If (pursuant to any assignment or sublease required hereby or consented to by Lessor pursuant hereto) Lessee assigns this agreement or subleases any Unit, (i) Lessee shall remain liable for all obligations of Lessee hereunder, whether or not Lessor accepts or acquiesces in substituted performance of those obligations by the assignee or sublessee and (ii) such sublease shall be made expressly subject, and the sublessee's rights thereunder subordinate in all respects, to this Agreement and the rights and remedies of Lessor contained herein.

ARTICLE IX. Liens

Lessee will not permit any Unit to be subject to any lien, charge or encumbrance whatsoever except (i) the respective rights of Lessor and Lessee as herein provided, (ii) the Gondola Car Agreement and other subleases (or similar usage arrangements) expressly permitted hereby, (iii) liens asserted by any person claiming by, through or under Lessor and resulting from acts or omissions of Lessor, except to the extent that such liens, charges or encumbrances arise from the failure of Lessee to perform any of Lessee's obligations hereunder, (iv) liens for taxes either not yet due or which are subject to Lessee's Right to Contest, (v) inchoate, materialmen's, mechanics', workmen's, repairmen's, employees' or other like liens arising in the ordinary course of business and not delinquent and (vi) liens arising out of judgments or awards against Lessee which are subject to Lessee's Right to Contest.

ARTICLE X. Insurance

10.1. Physical Damage Insurance. At its own expense, Lessee shall maintain physical damage insurance on each Unit against fire and such other perils and in such amounts as are usually carried by corporations engaged in the same or a similar business and similarly situated to Lessee; provided, however, that in no event shall the amount of such insurance, subject to such deductible, if any, as shall be set forth in the Lease Schedule, at any time be less than the amount of physical damage insurance maintained on other units of equipment of the same or comparable type owned, leased or operated by Lessee. Notwithstanding the foregoing sentence, for so long as the Gondola Car Agreement remains in full force and effect, Lessee shall not be required to maintain such physical damage insurance; provided, however, that if Lessee shall obtain physical damage insurance after the date hereof on any other unit of equipment owned, leased or operated by Lessee of the same or comparable type as the Units, Lessee shall, from the date thereof, maintain on each Unit physical damage insurance in an amount no less than the amount of any such subsequently acquired physical damage insurance.

10.2. Liability Insurance. At its own expense, Lessee shall maintain insurance protecting the interests of both Lessor and Lessee against liability for property damage to third persons and personal injury or death arising out of the maintenance, use, operation and ownership of the Equipment, in such amounts as are usually carried by corporations engaged in the same or similar businesses and similarly situated to Lessee provided, however, that in no event shall the amount of such insurance per person and per occurrence (subject to such deductible, if any, as shall be set forth in the Lease Schedule) be less than the amount set forth in the Lease Schedule.

10.3. General Insurance Provisions. All insurance required by Sections 10.1 and 10.2 of this Agreement shall name Lessor and Lessee as insured parties, shall be maintained with responsible insurance companies meeting such reasonable standards as may from time to time be established by Lessor and shall provide that the coverage thereunder may be altered or cancelled only after not less than 30 days' prior written notice to Lessor.

10.4. Payment of Premium by Lessor. In the event that Lessee shall fail to obtain or maintain insurance in accordance with the provisions of this Agreement, Lessor shall have the right to obtain, and pay the premiums on, such insurance as Lessor deems necessary and Lessee shall, upon demand, reimburse Lessor in an amount equal to the amount of such premiums paid plus interest at the Interest Payment Rate from the date of such payment to the date of such reimbursement.

ARTICLE XI. Assumption of Risk; Indemnification

11.1 General. Lessee does hereby assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor and its successors, assigns, representatives, directors, officers, employees, agents and servants from and against, and, subject to Lessee's Right to Contest, does hereby agree to pay, when due, as Additional Rent, all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including reasonable legal fees and expenses, of whatsoever kind or nature, whether foreseen or unforeseen, imposed upon, incurred by or with respect to or asserted against any Unit, Lessor or its successors, assigns, representatives, directors, officers, employees, agents or servants, in any way relating to or arising out of the manufacture, purchase, acceptance or rejection, ownership, delivery, lease, use, possession, operation, condition, repair, replacement, reconstruction, return or other disposition of any Unit, including without limitation those in any way relating to or arising out of or alleged to arise out of (i) any latent or other defects whether or not discoverable by Lessor or Lessee, (ii) any claim for patent, trademark or copyright infringement, (iii) any claim based on strict liability in tort and (iv) any and all license fees, assessments and sales, use, rent, property and other taxes now or hereafter imposed by any federal, state or local government upon any Unit or its use or payments hereunder, or upon this Agreement (excluding, however, taxes, fees and other charges based upon or measured by Lessor's net income, together with interest and penalties with respect thereto), whether the same shall be payable by or billed or assessed to Lessor or Lessee, together with any penalties or interest in connection therewith; provided, however, that nothing in this Section 11.1 shall be construed so as to require Lessee to indemnify Lessor for its own gross negligence or willful misconduct. Lessee shall be obligated under this Section 11.1 irrespective of whether Lessor or any of its successors, assigns, representatives, directors, officers, employees, agents or servants shall also be indemnified with respect to the same matter under any other agreement by any other person. In the event Lessee is required to make any payment under this Section 11.1, Lessee shall pay to Lessor an amount which after deduction of all taxes required to be paid by Lessor or any other person indemnified hereunder in respect of the receipt of such payment (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of such other taxes) shall be equal to the amount of such payment. Lessee and Lessor each agree to give the other promptly upon obtaining knowledge thereof written notice of any claim or liability hereunder indemnified against; provided, however, that the failure to give such notice shall not in any way affect, impair or diminish Lessee's obligations hereunder.

11.2. Federal Income Tax Matters.

(a) As between Lessor and Lessee, Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Code to an owner of property, including, without limitation, (i) an allowance for an investment tax credit as provided by Section 38 of the Code and (ii) an allowance for depreciation as provided by Section 167 of the Code. Accordingly, Lessee represents and warrants that (i) at the time Lessor becomes the owner of the Equipment, the Equipment constitutes "new Section 38 property" within the meaning of Section 48(b) of the Code and at such time, none of the Units have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with Lessor by virtue of this Agreement and (ii) at all times during the Term relating to the respective Units, each Unit will constitute "Section 38 property" within the meaning of Section 48(a) of the Code.

(b) Lessee acknowledges that the anticipated availability to Lessor of a specified amount of investment tax credit and an annual allowance for depreciation is fundamental to the economics of this Agreement. Lessee further acknowledges that certain factors affecting such investment tax credit and allowance for depreciation are within the knowledge, control and experience of Lessee. Accordingly, the basis upon which the investment tax credit and allowance for depreciation will be determined are set forth on the Lease Schedule.

(c) As used in this Agreement: (i) the term "ITC" shall mean the amount of the investment tax credit shown in the Lease Schedule; (ii) the term "Depreciation Deductions" shall mean an allowance for depreciation calculated under the criteria set forth in the Lease Schedule; and (iii) the term "Code" shall mean the Internal Revenue Code of 1954, as amended to the date hereof and as in effect on the date hereof.

(d) If there shall be a disallowance, elimination, recomputation, reduction, recapture or disqualification (hereinafter called "Loss"), in whole or in part, of the ITC for any Unit which results from:

- (i) the failure of all of Lessor's Cost of the Equipment to qualify as "new Section 38 property", as defined in the Code, at the time a Certificate of Acceptance is executed with respect to such Unit; or
- (ii) the failure of any Unit to continue to qualify as "Section 38 property", as defined in the Code, throughout the Term; or

- (iii) any amendment to, or change in, the Code, the income tax regulations promulgated thereunder or published administrative interpretations of the Code or such regulations; or
- (iv) any act, or failure to act, at any time by Lessee or any of its officers, employees or agents including without limitation, any act, or failure to act, in respect of the income tax returns of Lessee and any misrepresentation in this Agreement),

Lessee shall pay to Lessor as Additional Rent, within ten days after receipt of written request from Lessor, an amount which, after deduction of federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent, is equal to such Loss of the ITC.

(e) If there shall be a Loss, in whole or in part, of Depreciation Deductions for any Unit which results from:

- (i) the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 167(c)(2) of the Code from commencing with Lessor by virtue of this Agreement; or
- (ii) the failure of all of Lessor's Cost of the Equipment to qualify as property "the original use" of which, as defined in Section 167(c)(2) of the Code, commenced with Lessor under this Agreement; or
- (iii) a change in the 12-year "Useful Life" of any Unit for purposes of the Depreciation Deductions; or
- (iv) any amendment to, or change in, the Code, the income tax regulations promulgated thereunder or published administrative interpretations of the Code or such regulations; or
- (v) any act, or failure to act, at any time by Lessee or any of its officers, employees or agents (including without limitation, any act, or failure to act, in respect of the income tax returns of Lessee and any misrepresentation in this Agreement),

Lessee shall pay to Lessor as Additional Rent, after written request of Lessor, an amount which, after deduction of federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the

receipt of such Additional Rent, will (in the reasonable opinion of Lessor) cause Lessor's net yield and cash flows in respect of such Unit to equal the net yield and cash flows that Lessor had expected to receive if Lessor had not suffered a Loss with respect to the Depreciation Deductions. Such Additional Rent shall be payable over the then remaining Term commencing with the first Rental Payment Date occurring more than ten days after Lessor notifies Lessee of the required Additional Rent, or upon demand if no part of the Term shall then remain.

(f) Notwithstanding the provisions of paragraph (d) of this Section 11.2, Lessee shall not be required to make any payment on account of any Loss of the ITC due solely to (i) the failure of Lessor to have any federal income tax liability against which to apply the ITC or the inability of Lessor to utilize the ITC as a result of the limitation imposed by Section 46(a)(3) of the Code, (ii) the failure to properly claim the ITC in the tax returns filed by Lessor, or (iii) the sale or disposition of the Equipment, any Unit or this Agreement by Lessor prior to any Default by Lessee.

(g) Notwithstanding the provisions of paragraph (e) of this Section 11.2, Lessee shall not be required to make any payment on account of any Loss of the Depreciation Deductions due solely to (i) the failure to properly claim the Depreciation Deductions in the tax returns filed by Lessor, or (ii) the sale or disposition of the Equipment, any Unit or this Agreement by Lessor prior to any Default by Lessee.

(h) In the event the Internal Revenue Service or any state or local taxing authority proposes adjustments to the ITC or Depreciation Deductions which, if successful, could result in a Loss for which Lessee would be required to indemnify Lessor pursuant to this Section 11.2, Lessor hereby agrees to notify Lessee promptly of such proposed adjustment, to withhold payment of the tax claimed to be due for a period of 30 days after giving such notice, and to exercise in good faith its best efforts (determined by Lessor in Lessor's sole discretion to be reasonable, proper and consistent with the overall tax interests of Lessor and its affiliated companies and not requiring administrative or judicial proceedings beyond the level of an Internal Revenue Service examining agent) to avoid requiring Lessee to pay such indemnity, provided that Lessee shall have agreed to indemnify Lessor in a manner satisfactory to Lessor for any liability or loss which Lessor may incur as a result of contesting such adjustments and shall have agreed to pay Lessor on demand all costs and expenses which Lessor may incur in connection with contesting such adjustments including without limitation reasonable attorneys', accountants', engineers' and like professional fees and disbursements.

(i) In the event that Lessor shall elect to contest the adjustments referred to in paragraph (h) above by paying the tax claimed and then seeking a refund thereof, Lessee shall pay to Lessor an amount equal to the Interest Payment Rate on the amount of such tax computed from the date of payment of such tax to the date of final determination of such adjustment, such interest to be payable in equal installments within each calendar year on each Rental Payment Date. Upon receipt by Lessor of a refund of any federal income tax paid by it in respect of which Lessee has paid interest as set forth above while such tax payment was contested by Lessor, any interest on such refund paid to Lessor by the United States Government shall be paid to Lessee forthwith upon receipt by Lessor.

(j) Lessee acknowledges that Lessor has entered into this Agreement with the expectation that all Rent received hereunder and all deductions relating to such Rent will, for Federal income tax purposes, be treated as being from a "United States source." Lessee agrees to notify Lessor, no later than March 1 of each year, of the amount of Rent, if any, paid under this Agreement which is deemed to be derived from or allocable to sources outside the United States as a result of Lessee's use of any Unit or Units outside the United States.

In the event any amount includable in the gross income of Lessor with respect to any one or more of the Units or any deduction allowable to Lessor with respect to such Unit or Units shall be treated as derived from or allocable to sources outside the United States, Lessee shall pay to Lessor as Additional Rent, after written request of Lessor, an amount which, after deduction of Federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent, will (in the reasonable opinion of Lessor) cause Lessor's net yield and cash flows in respect of such Unit or Units to equal the net yield and cash flows that Lessor had expected to realize had such income or deductions not been treated as having been derived from or allocable to sources outside the United States. Such Additional Rent shall be payable within ten days after receipt of written request from Lessor. In determining the Additional Rent due under this paragraph, Lessor shall take into account any additional Federal income tax benefits actually realized by Lessor for the taxable year as a result of such income or deductions being treated as "foreign source" items, provided however, Lessor shall not be required to maximize such additional Federal income tax benefits available to Lessor with respect to such "foreign source" items if it is not in the best tax interests of Lessor as determined by Lessor, in its sole discretion.

(k) If for any reason all or part of the cost of any alterations, modifications, additions, maintenance or repairs of or to any Unit (hereinafter called "Additional Expenditures") is required to be included in the gross income of Lessor under the Code or the Income Tax Regulations at any time prior to the expiration of the Term of this Agreement and is not fully deductible in the same taxable period, then Lessee shall pay to Lessor as Additional Rent, within ten days after receipt of written request from Lessor, the sum of (i) the net amount of any increase in state, local or federal income tax liability resulting from the inclusion of such Additional Expenditures in the gross income of Lessor, (ii) the amount of any interest (net of any actual decrease in state, local or federal income tax resulting from any allowable deduction of such interest from taxable income) or penalties, including any additions to tax because of underpayment of estimated tax, which may be assessed against Lessor in connection therewith and (iii) the amount of any state, local or federal income taxes which are or will be required to be paid by (or, if previously paid, which will not be refunded to) Lessor as a result of the receipt of amounts pursuant to this paragraph (k).

(l) Reference in this Section 11.2 to Lessor shall include any affiliated group of which Lessor is a member for purposes of filing consolidated tax returns, provided that only Lessor shall be obligated with respect to the covenants and duties imposed herein on Lessor.

11.3 Survival of Obligations. This Article XI shall become and be effective and in full force and effect from the date of this Agreement (even though no Equipment may have been accepted by Lessee and even though the Term may not have commenced) and shall remain in effect notwithstanding the expiration or other termination of the Term insofar as it relates to an event or state of facts which occurred or existed or which is alleged to have occurred or existed prior to such expiration or termination.

ARTICLE XII. Damage to Property

12.1. Duty to Notify. In the event any Unit shall be lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever, or title thereto shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise (herein referred to as an "Event of Loss"), Lessee shall promptly notify Lessor as to the circumstances and time of such event.

12.2. Stipulated Loss Value. Effective upon the happening of an Event of Loss with respect to any Unit, Lessee shall become obligated, without demand or notice, to pay to

Lessor on the Rental Payment Date next following such Event of Loss an amount equal to the Stipulated Loss Value for such Unit as of such Rental Payment Date together with all Basic Rent due on such Rental Payment Date. The obligation of Lessee to pay Basic Rent for such Unit shall cease when such Stipulated Loss Value and Basic Rent payment has been made and such Unit shall cease to be part of the Equipment leased hereunder effective as of such payment. Upon request of Lessee, Lessor will execute and deliver an appropriate document cancelling or amending the Certificate of Acceptance pursuant to which such Unit was leased under this Agreement, but Lessor's failure so to do shall not affect Lessee's obligations under this Agreement, and Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest, if any, in and to such Unit.

12.3 Insurance and Condemnation Proceeds. Any and all insurance or other payments received by Lessor or Lessee (except under any insurance policy maintained pursuant to Section 10.2 hereof) as a result of any Event of Loss of a Unit shall be paid to or retained by Lessor and applied against Lessee's obligation to pay the Stipulated Loss Value.

ARTICLE XIII. Return of Property

At the expiration or sooner termination of the Term, Lessee shall return the respective Units to Lessor, free of all Lessee advertising or insignia placed thereon by Lessee, in a condition which complies with all governmental laws, regulations and rules as required by Section 8.1 hereof, and in the same operating order, repair, condition and appearance as when originally received by Lessee, excepting only for reasonable wear and tear and damage by any cause covered by collectible insurance. Lessee shall pay or reimburse Lessor for the cost of all repairs necessary to restore such Unit to such condition. Lessee shall return each Unit to Lessor upon storage tracks designated by Lessor within 500 miles of Pittsburgh, Pennsylvania. If Lessor so requests, Lessee will defer such return of any of the Units and will, without expense to Lessor, store same at premises of Lessee or Maryland and Pennsylvania Railroad Company used by Lessee for the storage of similar property and approved by Lessor, for a period not to exceed 100 days from the date of the expiration or sooner termination of the Term, the obligations of Lessee during that interval in respect to the Units being that of reasonable care under all the circumstances; provided, however, that the foregoing shall not impose upon Lessee any responsibility for maintenance, overhaul, or any other expense during such storage. If Lessor so requests, Lessee shall continue to maintain insurance upon such Units in accordance with Article X hereof and Lessor shall reimburse Lessee for the cost of such insurance allocable to such Equipment. If Lessee fails to return any Unit to the location designated by Lessor in violation of this Article XIII, Lessee shall pay to Lessor on demand daily rent for such Unit equal to .0313% of Lessor's Cost of such Unit from the date of expiration

or sooner termination of the Term until the return of such Unit in accordance with this Article XIII, and shall also pay, on demand, with respect to such Unit, all amounts which would have been payable as Additional Rent hereunder with respect to such period if such period had been part of the Term hereof; provided, however, that the receipt by Lessor of such rent shall not affect Lessor's right to declare a default hereunder because of Lessee's failure to return such Unit and to pursue the remedies granted hereunder or otherwise available at law or in equity.

ARTICLE XIV. Defaults; Remedies

14.1. Defaults; Remedies. If during the Term of this Agreement one or more of the followings events ("Events of Default") shall occur:

(a) Default shall be made in the payment when due of any Basic Rent or Interim Rent herein provided and such default shall continue for a period of three (3) days; or

(b) Default shall be made in the payment when due of any Additional Rent herein provided and such default shall continue for a period of ten (10) days; or

(c) Lessee shall attempt to remove, sell, transfer, encumber or sublet (except as expressly permitted under this Agreement) any Unit; or

(d) Default shall be made in the observance or performance of any other covenants, conditions and agreements on the part of Lessee contained herein and such Default shall continue for fifteen (15) days after written notice from Lessor to Lessee specifying the Default and demanding the same to be remedied; or

(e) A proceeding shall have been instituted in a court having jurisdiction in the premises, seeking a decree or order (i) for relief in respect of Lessee in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of Lessee or of its property, or (iii) for the winding up or liquidation of the affairs of Lessee; and either (I) any such proceeding shall remain undismissed or unstayed and in effect for a period of 30 consecutive days or (II) such court shall enter a decree or order granting the relief sought in such proceeding; or

(f) Lessee shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession

by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of Lessee or for any substantial part of its property, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action in furtherance of any of the foregoing; or

(g) An event of default under any mortgage, indenture or other agreement or lease evidencing indebtedness of the Lessee shall have occurred which shall result in the declaring due and payable of indebtedness of Lessee prior to the date on which it would otherwise have become due and payable, and such declaration shall not have been satisfied, rescinded or annulled within ten days; or

(h) Lessee shall have knowledge that there has occurred and is continuing any condition, event, act or omission which it reasonably believes constitutes, or with notice or lapse of time would constitute, an Event of Default, and shall fail promptly to notify Lessor of such condition, event, act or omission; or

(i) Any representation or warranty made by Lessee in this Agreement, the Assignment or any Certificate of Acceptance, or any information furnished by Lessee in any instrument, certificate or other document delivered by or on behalf of Lessee pursuant hereto, shall prove to be false and misleading in any material respect when made;

then, in any such case, Lessor at its option may:

A. Proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable duties and obligations of Lessee under this Agreement or to recover from Lessee any and all damages or expenses, including reasonable attorneys' fees, which Lessor shall have sustained by reason of Lessee's Default or on account of Lessor's enforcement of its remedies hereunder; or

B. By notice in writing to Lessee, terminate this Agreement, whereupon all right of Lessee to the use of the Equipment shall absolutely cease and terminate as though this Agreement had never been made, but Lessee shall deliver possession of the Equipment to Lessor in accordance with Article XIII hereof and Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents and without notice to Lessee enter upon the premises of Lessee or other premises where the Units may be located and take possession of all or any such Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purpose whatever.

Upon such termination, Lessor shall have the right to recover forthwith from Lessee as damages for loss of the bargain and not as a penalty and as reasonable rent for the use of the Equipment and for the depreciation thereof, the sum of the following:

(1) an amount with respect to each Unit which represents the excess of the Stipulated Loss Value of such Unit over one of the following, as Lessor may in its sole discretion elect: (x) in the event Lessor shall sell such Unit, the net proceeds of such sale, (y) in the event Lessor shall re-lease such Unit, the net rents payable under the terms of such re-leasing for a period equal to the remaining term of this Agreement, discounted to the time of computation at the Interest Payment Rate, or (z) the fair market value of such Unit at the time of such termination;

(2) all due and unpaid Rent for the Equipment to the date of termination;

(3) an amount equal to accrued taxes and other amounts payable hereunder by Lessee with respect to the Equipment;

(4) all reasonable costs, expenses, losses and damages incurred or sustained by Lessor by reason of such Default; and

(5) interest at the Interest Payment Rate on each of the foregoing from the date upon which such amounts were first payable which date, in the case of the amounts payable pursuant to clause (1) above, shall be the date upon which the Event of Default which results in the termination of this Agreement first occurs.

If on the date of such termination or repossession, any Unit be damaged, lost, stolen or destroyed, or be subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, Lessee shall remain liable for the Stipulated Loss Value pertaining to such Unit less the amount of any insurance recovery or other payment received by Lessor in connection therewith.

14.2. Remedies Cumulative; Waiver of Requirements. The remedies in this Agreement provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. TO THE EXTENT THAT SUCH WAIVER IS PERMITTED BY LAW, LESSEE HEREBY WAIVES ANY MANDATORY REQUIREMENTS OF LAW, NOW OR HEREAFTER IN EFFECT, WHICH MIGHT LIMIT OR MODIFY ANY OF THE REMEDIES HEREIN PROVIDED, INCLUDING WITHOUT LIMITATION ANY RIGHT WHICH LESSEE MAY HAVE TO NOTICE AND HEARING PRIOR TO THE REPOSSESSION AND SALE OR LEASING OF ANY UNIT.

ARTICLE XV. Assignment by Lessor

Lessee acknowledges and understands that the terms and conditions of this Agreement have been agreed to by Lessor in anticipation of its being able to assign its interest under this Agreement and in and to the Equipment leased hereunder to a bank or other lending institution or to others having an interest in the Equipment or this transaction, all or some of which will rely upon and be entitled to the benefit of the provisions of this Article XV. Lessee agrees with Lessor and with such bank or other lending institution or such other party (for whose benefit this covenant is expressly made) and in consideration of the provisions hereof, as follows: (i) to recognize any such assignment, (ii) to accept the directions or demands of such assignee in place of those of Lessor, (iii) to surrender the Equipment only to such assignee, (iv) to pay all Rent payable hereunder and to do any and all things required of Lessee hereunder and not to terminate this Agreement, notwithstanding any Default by Lessor or the existence of any offset as between Lessor and Lessee or the existence of any other liability or obligation of any kind or character on the part of Lessor to Lessee whether or not arising hereunder, and (v) not to require any assignee of this Agreement to perform any duty, covenant or condition required to be performed by Lessor under the terms of this Agreement, all rights of Lessee in any such connection being hereby waived as to any and all of such assignees; provided, however, that nothing contained in this Article XV shall relieve Lessor from its obligations to Lessee hereunder.

ARTICLE XVI. Quiet Possession

So long as (i) no Event of Default hereunder shall have occurred and be continuing and (ii) Lessee and Railroad shall observe and perform all of their covenants and agreements under the Assignment, Lessor shall not do (nor suffer to be done by any person claiming by, through or under Lessor with respect to matters not related to the transactions contemplated by this Agreement) any act which will interfere with the right of Lessee peaceably and quietly to hold, possess and use the Equipment during the Term and in accordance with the provisions of this Agreement.

ARTICLE XVII. Further Assurances

Lessee and Lessor will promptly and duly execute and deliver to the other party hereto such further documents and assurances and take such further action as Lessor or Lessee may from time to time reasonably request in order to carry out more effectively the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Lessor or Lessee hereunder, including, without limitation, if requested by Lessor or Lessee, in either case at the expense of Lessee, the execution and delivery of supplements or amendments hereto, in recordable form subjecting

to this Agreement any replacement property and the recording or filing of counterparts hereof, or of financing statements with respect thereto in accordance with the laws of such jurisdiction as Lessor or Lessee may from time to time deem advisable.

ARTICLE XVIII. Miscellaneous

Nothing herein contained shall give or convey to Lessee any right, title or interest in and to any Unit leased hereunder except as a lessee. The obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from complying therewith because of labor disturbances (including strikes and lockouts), war, Acts of God, fires, storms, accidents, governmental regulations or interference or any cause whatever beyond its control. No obligation of Lessor hereunder shall survive the Term, and should Lessor permit the use of any Unit beyond such Term, the obligations of Lessee hereunder shall continue and such permissive use shall not be construed as a renewal of the Term hereof nor as a waiver of any right or continuation of any obligation of Lessor hereunder, and Lessor may take possession of any such Unit at any time after the Term upon demand after five days' notice. Any cancellation or termination by Lessor pursuant to the provisions of this Agreement shall not release Lessee from any then outstanding obligations to Lessor hereunder. This Agreement constitutes the entire agreement between the parties and there are no warranties (in respect of the Equipment or otherwise), express or implied, or collateral or contemporaneous agreements that affect its import other than such as are contained herein. This Agreement may be modified, amended or mutually rescinded only by a written instrument executed by each of the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and, subject to Section 8.6 hereof, their respective successors and assigns. Time is of the essence of this Agreement. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania. Any document required to be delivered hereunder in executed form or otherwise may be delivered by telecopier.

ARTICLE XIX. Notices

Any notices required or permitted under this Agreement, or by law in respect of this Agreement, shall be in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class, postage prepaid, or when sent by telex or prepaid telegraph, addressed to the party required to receive the same at the address set forth below such

party's signature hereto, or to such other address as such party shall specify by like notice.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

Attest:

MELLON NATIONAL LEASING CORPORATION

Lessor

Robert J. Scully
Assistant Secretary

By: [Signature]

Title: Vice President

[Corporate Seal]

Address: 3629 Mellon Bank Building
Pittsburgh, Pennsylvania 15219

Attest:

EMONS INDUSTRIES, INC.

Lessee

Indice Horvathovic
Asst Secy

By: [Signature]

Title: Chief Executive Officer

[Corporate Seal]

Address: 490 East Market Street
York, Pennsylvania 17403

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF)

Allegheny)

SS:

On this, the 17th day of April, 1980, before me,
a Notary Public, the undersigned officer, personally appeared
Arthur Folsom, Jr., who acknowledged himself
to be the Vice President of MELLON NATIONAL LEASING
CORPORATION, a corporation, and that he as such Vice
President, being authorized to do so, executed the foregoing
instrument for the purposes therein contained by signing the name
of the corporation by himself as Vice President.

IN WITNESS WHEREOF, I hereto set my hand and official
seal.

Nancy R. Lewis
Notary Public

My Commission Expires:

NANCY R. LEWIS, Notary Public
Pittsburgh, Allegheny County, Pa.
My Commission Expires Jan. 29, 1984

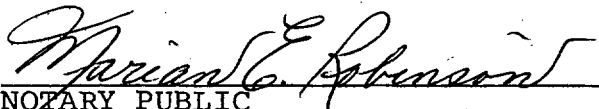
COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF YORK)

SS:

On this, the 10th day of April, 1980, before me, a Notary Public, the undersigned officer, personally appeared Robert Grossman, who acknowledged himself to be the Chief Executive Officer of EMONS INDUSTRIES, INC., a corporation and that he as such Chief Executive Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Chief Executive Officer.

IN WITNESS WHEREOF, I hereto set my hand and official seal.


NOTARY PUBLIC

My commission expires:

MARIAN E. ROBINSON, NOTARY PUBLIC
YORK, YORK COUNTY, PA.
MY COMMISSION EXPIRES SEPT. 5, 1983

LEASE SUPPLEMENT
to
AGREEMENT AND LEASE
dated as of March 1, 1980
between
MELLON NATIONAL LEASING CORPORATION, Lessor
and
EMONS INDUSTRIES, INC., Lessee

Purchase Option. If Lessee is not in default hereunder, Lessee shall have the right to purchase all, but not less than all, the Units at the expiration of the Base Term at a price equal to their then "fair market value" (as hereinafter defined). Lessee shall give Lessor written notice 120 days prior to the end of the Base Term of its election to exercise such option. Payment of the option price shall be made on the last day of the Base Term at the place of payment specified in Section 4.4 by wire transfer against delivery of a bill of sale transferring each Unit to Lessee as is, where is, and with all faults. The "fair market value" of each such Unit shall be determined by an appraiser selected by mutual agreement of Lessor and Lessee. If Lessor and Lessee are not able to agree upon an appraiser, the fair market value shall be determined by American Appraisal Company. Lessee shall pay the fees and expenses of the appraiser in making such determination. The fair market value as finally determined shall bear interest for the period, if any, from the expiration of the Base Term to the date of payment at the Interest Payment Rate.

Option to Lease. If Lessee is not in default hereunder, Lessee shall have the right to lease all, but not less than all, the Units at the expiration of the Base Term or of the first or second Option Term (as hereinafter defined) therefor at a price equal to their then "fair market rental value" (as herein defined) for an additional period of one year (the "Option Term"). Lessee shall give Lessor written notice 120 days prior to the end of the Base Term or Option Term, as the case may be, of its election to exercise such option. Rent with respect to the Option Term shall be paid in equal installments quarterly in arrears during the Option Term. The "fair market rental value" of each Unit shall be determined by an appraiser selected by mutual agreement of Lessor and Lessee. If Lessor and Lessee are not able to agree upon appraiser, the fair market rental value shall be determined by American Appraisal Company. Lessee shall pay the fees and expenses of the appraiser in making such determination.

LEASE SCHEDULE

to

AGREEMENT AND LEASE

dated as of March 1, 1980

between

MELLON NATIONAL LEASING CORPORATION, Lessor and
EMONS INDUSTRIES, INC., Lessee

1. Description of Equipment: One hundred (100) newly manufactured one hundred (100) ton, fifty-two foot six inch Gondola railcars manufactured by Berwick Forge & Fabricating, a division of Whitaker Corporation, and bearing identifying road numbers SB6000 through SB6099, inclusive.
2. Location of Equipment: Continental United States, Canada and Mexico.
3. Final Delivery Date: April 30, 1980
4. Interest Payment Rate: 18%
5. Term:
 - a. Interim Term. From the date as of which the parties execute and deliver a Certificate of Acceptance with respect to a Unit until the commencement of the Base Term with respect to the Unit.
 - b. Base Term. A period of 180 months beginning on the day after the latest of (i) the sixtieth (60th) day of the Interim Term of the fiftieth (50th) Unit leased hereunder, (ii) the thirtieth (30th) day of the Interim Term of the final Unit leased hereunder, or (iii) May 14, 1980; provided, however, that if fifty (50) or less Units are leased hereunder, such period shall begin on the day after the sixtieth (60th) day of the Interim Term of the final Unit leased hereunder.
6. Purchase Price: Not to exceed \$4,200,000 in the aggregate.

7.

Rent:

a. Interim Rent. On the Interim Rental Payment Date, Lessee shall pay to Lessor by check or wire transfer Interim Rent with respect to each Unit determined as follows:

$$C \times \frac{3.7971\%}{90} \times D$$

provided, however, that with respect to each of the first (1st) through fiftieth (50th) Units to be leased hereunder which have Interim Terms in excess of sixty (60) days, the Interim Rent for such Unit shall be reduced by an amount determined as follows:

$$C \times \frac{.9844\%}{90} \times (D-60)$$

and further provided, that with respect to each of the fifty-first (51st) through one hundredth (100th) Units to be leased hereunder which have Interim Terms in excess of thirty (30) days, the Interim Rent for such Unit shall be reduced by an amount determined as follows:

$$C \times \frac{.9844\%}{90} \times (D-30)$$

As used in the above formulas, "C" means Lessor's Cost of the Unit; and "D" means the number of days in the Interim Term of the Unit.

b. Basic Rent. On the first Basic Rental Payment Date and on each of the 59 succeeding Basic Rental Payment Dates, Lessee shall pay to Lessor by check or wire transfer Basic Rent equal to 2.8127% of Lessor's Cost of the Units. Each installment of Basic Rent shall be for the three month period immediately preceding the Basic Rental Payment Date on which such installment is due and payable.

7.

Rental Payment Dates:

a. Interim Rental Payment Date: The first day of the Base Term.

b. Basic Rental Payment Dates: The ninetieth (90th) day of the Base Term and the last day of each succeeding consecutive three-month period thereafter.

8.

Insurance: The insurance required to be carried by Lessee pursuant to Section 10.1 of the Agreement may be subject to a deductible of not more than \$1,000 per occurrence. The insurance required to be carried by Lessee pursuant to Section 10.2 of the Agreement shall be in an amount of not

less than \$5,000,000 per occurrence and may be subject to a deductible of not more than \$100,000.

9. Bases for Computation of ITC and Depreciation Deductions:

a. ITC. 10% of Lessor's Cost of each Unit available to Lessor in the calendar year in which Lessee and Lessor accept the Unit pursuant to Section 3.1 of the Agreement.

b. Depreciation Deduction-Method. Double declining balance switching to sum-of-the-years-digits. Salvage value 10% of Lessor's Cost, 10% ignored per Section 167(f) of the Code.

c. Depreciation Deduction-Life. ADR Asset Guideline Class 00.25, twelve year lower limit, per Rev. Proc. 77-10.

10. Stipulated Loss Values. The Stipulated Loss Value of a Unit shall be equal to the greater of (i) the "AAR settlement value" for such Unit determined in accordance with Rule 107 of the Field Manual of the AAR Interchange Rules (or the "fair market value" of such Unit, as defined in the Lease Supplement, should Rule 107 be abrogated) and (ii) an amount equal to the applicable percentage of Lessor's Cost for such Unit determined in accordance with the table set forth on Annex 1 to this Lease Schedule.

APPROVED AND AGREED TO as of the 1st day of March, 1980
as the Lease Schedule to and forming a part of the above-described Agreement and Lease.

MELLON NATIONAL LEASING CORPORATION

Lessor

By: [Signature]

Title: Vice President

EMONS INDUSTRIES, INC.

Lessee

By: [Signature]

Title: Chief Executive Officer

ANNEX 1

EMONS INDUSTRIES, INC.

ON OR BEFORE
COMMENCEMENT
OF BASE TERM 100.0000% OF LESSOR'S COST

ON BASIC RENT PAYMENT DATE NUMBER	% OF LESSOR'S COST	ON BASIC RENT PAYMENT DATE NUMBER	% OF LESSOR'S COST
1	103.2122	31	86.0470
2	104.1955	32	85.0892
3	105.1141	33	84.0667
4	105.9681	34	82.9795
5	106.7573	35	81.8275
6	107.4818	36	80.6109
7	108.1416	37	79.3295
8	108.7367	38	77.9835
9	109.2671	39	76.5727
10	109.7328	40	75.0973
11	110.1338	41	73.5571
12	110.4701	42	71.9522
13	104.5688	43	70.2827
14	104.7757	44	68.5484
15	104.9179	45	66.7494
16	104.9953	46	64.8857
17	105.0081	47	62.9573
18	104.9562	48	60.9642
19	104.8395	49	58.9064
20	104.6582	50	56.7839
21	98.2393	51	54.5967
22	97.9285	52	52.3448
23	97.5530	53	50.0281
24	97.1128	54	47.6468
25	96.6080	55	45.2008
26	96.0384	56	42.6900
27	95.4041	57	40.1146
28	94.7051	58	37.4744
29	87.7685	59	34.7696
30	86.9401	60	32.0000
		AND THEREAFTER	32.0000

CERTIFICATE OF ACCEPTANCE

No. _____ dated the _____ day of _____

to Agreement and Lease (the
"Agreement") dated as of March 1, 1980
between MELLON NATIONAL LEASING CORPORATION ("Lessor")
and
EMONS INDUSTRIES, INC. ("Lessee")

THIS CERTIFICATE OF ACCEPTANCE is executed pursuant to the Agreement and the terms herein shall have the meanings ascribed to them in the Agreement.

Lessor and Lessee do hereby confirm and agree that (i) the Units described in Attachment 1 hereto, having an aggregate Lessor's Cost as set forth below, have been delivered as of the date hereof at the location or locations indicated on said Attachment 1, (ii) such Units have been duly accepted by Lessee as part of the Equipment for leasing under the Agreement, (iii) such Units are hereby made subject to, and the rights and duties of the parties with respect thereto shall be governed by, the Agreement, and (iv) Lessee has become obligated to pay Interim Rent as provided in the Lease Schedule, and Basic Rent in the amount set forth below:

Lessor's Cost: \$ _____
Basic Rent: \$ _____ per quarter

Lessee confirms that it has caused to be affixed to each Unit described in Attachment 1 hereto the identification tag indicating Lessor's ownership of such Unit as required by the Agreement.

Lessee represents and warrants that the Units have been duly accepted by Lessee and South Buffalo Railway Company (the "Railroad") for the purpose of making the Units subject to one of the Gondola Car Agreements dated September 7, 1979 between Lessee and the Railroad and that attached hereto as

Attachment 2 is a certification by the Railroad of the Railroad's acceptance of the Units for such purpose.

WITNESS the due execution hereof as of the day and year first above written.

LESSEE:
EMONS INDUSTRIES, INC.:

LESSOR:
MELLON NATIONAL LEASING
CORPORATION

By: _____

By: _____

Title: _____

Title: _____

Certification

The Undersigned hereby certifies that the units of equipment (the "Units") described below have been duly accepted by the Undersigned and that such Units have become subject to one of the Gondola Car Agreements dated September 7, 1979 between Emons and the Undersigned:

SOUTH BUFFALO RAILWAY COMPANY

By: _____

Title: _____

ASSIGNMENT

Pursuant to Agreement and Lease
dated as of March 1, 1980 (the "Agreement")
between MELLON NATIONAL LEASING CORPORATION ("Lessor") and
EMONS INDUSTRIES, INC. ("Lessee")

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby
acknowledged, and intending to be legally bound hereby, Lessee
has bargained, sold, transferred and assigned and by these
presents does hereby bargain, sell, transfer and assign to
Lessor, its successors and assigns, forever, all right, title and
interest of Lessee in and to the

_____ * attached hereto.
Lessee agrees that, except as specifically set forth in the
Agreement and subject to the terms and conditions set forth
therein, none of the duties or obligations of Lessee under said
purchase orders, invoices or agreements is or has been delegated
to or in any manner assumed by Lessor.

IN WITNESS WHEREOF, Lessee has caused this Assignment to be
executed and delivered this _____ day of _____.

EMONS INDUSTRIES, INC.
Lessee

By: _____

Title _____

*List and describe purchase orders, invoices or agreements
between Lessee and the manufacturer or vendor of the Equipment.

EXHIBIT C

Mellon National Leasing Corporation
3629 Mellon Bank Building
Pittsburgh, Pennsylvania 15219

Gentlemen:

The undersigned, ("Vendor")
hereby consents to the assignment by Emons Industries, Inc.
("Lessee") to Mellon National Leasing Corporation ("Lessor") of
Lessee's rights under _____

_____. * Vendor
understands that such assignment is made in contemplation of the
leasing by Lessor to Lessee of the personal property covered by
such _____

_____. * (the "Units"). Vendor
agrees that Lessor intends to purchase the Units from Vendor upon
receipt from Lessee of (among other things) an executed
Certificate of Acceptance in the form provided in the Agreement
and Lease between Lessor and Lessee and that Lessor will pay
Vendor for the Units within two business days of the date of such
Certificate of Acceptance. Vendor agrees that none of the duties
or obligations of Lessee under any agreements of any nature
between Vendor and Lessee have been delegated to or in any manner
assumed by Lessor, except as stated in the immediately preceding
sentence.

Vendor agrees that, upon delivery and acceptance of the
Units by Lessee as evidenced by the execution of a Certificate of
Acceptance as described above, title to the Units shall vest in
Lessor and concurrently therewith Vendor shall execute and
deliver to Lessor a Bill of Sale with respect to the Units in the
form attached hereto.

Vendor agrees to indemnify and save Lessor and Lessee
harmless from any liability, loss, damage, claim and expense
which arise out of any claims for patent infringement relating to
the Units, except in cases of designs specified by Lessee and not
developed or purported to be developed by Vendor or any company
controlled by Vendor and articles and materials specified by
Lessee and not manufactured by Vendor or by any company
controlled by Vendor.

*List and describe purchase orders, invoices or agreements
between Lessee and Vendor relating to the Units.

EXHIBIT C

If the foregoing is acceptable to you, please so indicate by signing in the space below and returning one of the copies of this letter to us.

Very truly yours,

[NAME OF VENDOR]

By: _____

[Name]

Title: _____

EXHIBIT D

BILL OF SALE

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, and intending to be legally bound hereby, _____ (the "Vendor") has bargained, sold, conveyed, transferred and assigned and by these presents does hereby bargain, sell, convey, transfer and assign to MELLON NATIONAL LEASING CORPORATION ("Lessor"), its successors and assigns, forever, good and marketable title to the personal property described in SCHEDULE 1 attached hereto (the "Units").

The Vendor hereby covenants and warrants to Lessor, its successors and assigns, that the Vendor is the lawful owner of the Units and has full power and authority to sell the same as aforesaid, and the Units are on the date hereof free and clear of all claims, liens, encumbrances and claims of any nature.

IN WITNESS WHEREOF the Vendor has caused this Bill of Sale to be executed and delivered this _____ day of _____.

[Name of Vendor]

By _____
[Name]

Title _____